

**Board Meeting Minutes
April 22 & 23, 2004**

**Board for Professional Engineers and Land Surveyors
Sheraton Anaheim Hotel
900 South Disneyland Drive
Anaheim, California 92802
(714) 778-1700**

Thursday, April 22, 2004

Board Members Present: Gregg Brandow (President), James Foley (Vice President), Arthur Duffy, David Fruchtman, William Roschen, Millicent Safran, William Schock, Cindy Tuttle, and Michael Welch.

Board Members Absent: Robert Jones, Elizabeth Warren, Dale Wilson, and Edward Yu.

Board Staff Present: Cindi Christenson (Executive Officer), Anita Scuri (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Attorney General Liaison Analyst), Debbie Thompson (Budget Analyst), and Cindy Fernandez (Executive Analyst).

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Brandow at 9:10 a.m. Roll call was taken, and a quorum was established.

Dr. Brandow stated that Anita Scuri would be serving as the Board's Legal Counsel for this meeting because Mr. Duke had other commitments.

2. Public Comment

There was no public comment.

3. Closed Session

The Board went into closed session at 9:15 a.m.

4. Open Session to Announce the Results of Closed Session

Ms. Christenson reported that the Board adopted the results of the take-home examinations for the candidates who had previously passed the 8-hour portion of the indicated examinations and that the Board approved the successful and unsuccessful appeals of the October 2003 Geotechnical and Structural Engineering Examinations.

Ms. Christenson reported that the Board discussed pending litigation as noticed, specifically Lawrence B. Karp v. Board for Professional Engineers and Land Surveyors, et al., San Francisco Superior Court Case No. 402996, and Ladislav Peter Petrovsky v. Board for Professional Engineers and Land Surveyors, Los Angeles Superior Court Case No. BS080673, and Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492.

Ms. Christenson reported that the Board denied the Petition for Reconsideration of Jayant L. Gandhi.

5. Approval of Consent Items (Possible Action)

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

a. Approval of the Minutes of the March 5, 2004, Board Meeting

MOTION: Mr. Welch/Ms. Safran moved to approve the minutes of the March 5, 2004, Board meeting.

VOTE: 9-0, motion carried.

b. Approval of Candidates for Certification/Licensure (Based on Examination Results, Including Successful Appeals, Adopted in Closed Session)

MOTION: Ms. Tuttle/Mr. Welch moved to approve candidates for licensure and certification based on examination results, including successful appeal results and take home examination results, approved in closed session.

VOTE: 9-0, motion carried.

6. Approval of Delinquent Reinstatements (Possible Action)

MOTION: Ms. Safran/Mr. Duffy moved to approve the Delinquent Reinstatements as follows:

Civil

1. BRIAN DODD

Reinstate applicant's civil license once he/she takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, and the Board's Laws and Rules Examination.

2. TIMOTHY DURBIN

Reinstate applicant's civil license once he/she takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, and the Board's Laws and Rules Examination.

3. BENJAMIN GOLSHANI

Reinstate applicant's civil license once he/she takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, the Board's Laws and Rules Examination, and pays all required delinquent renewal fees.

4. ROBERT VILKER

Reinstate applicant's civil license once he/she takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, the Board's Laws and Rules Examination, and pays all required delinquent renewal fees.

5. STEVEN WHITEHEAD

Reinstate applicant's civil license once he/she takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, and the Board's Laws and Rules Examination.

Electrical

1. EDWARD S. JEWELL

Reinstate applicant's electrical license once he/she takes and passes the Board's Laws and Rules Examination.

2. WILLIAM LAJOUSKY

Reinstate applicant's electrical license once he/she takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

3. FRANK R. MARTIRE

Reinstate applicant's electrical license once he/she takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

Mechanical

1. ROBERT S. STELZER

Reinstate applicant's electrical license once he/she takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

VOTE: 9-0, motion carried.

7. Comity and Temporary Authorization Applications (Possible Action)

MOTION: Ms. Tuttle/Ms. Safran moved to approve the Amended Handout Comity List.

VOTE: 9-0, motion carried.

11. 2004/05 Strategic Plan (Possible Action)

Ms. Tuttle questioned why the Strategic Plan did not include action plans with dates. Ms. Christenson explained that the action plans had traditionally been internal working documents, which were not included in the Strategic Plan. Ms. Christenson explained that the Board has not been able to meet many of its Goals and Objectives in the last few years because of budget and staffing limitations. The Board requested that the action plans be presented at the June meeting.

Mr. Duffy questioned if the integrated database item should be included in the Strategic Plan since neither the Board nor the Legislature had yet approved that recommendation. Ms. Christenson explained that the Strategic Plans are tied to the budgeting process; anything the Board may request spending authority for must be in the Strategic Plan. Mr. Foley noted that the Board spent quite a bit of time developing its Strategic Plan several years ago but then could not meet many of its Goals and Objectives because of the budget situation. He suggested including an item in the Strategic Plan regarding securing funding to continue the operations of the Board at the level identified in the Strategic Plan.

Mr. Fruchtmann questioned why California does not require continuing education for professional engineers and land surveyors since most other states do. President Brandow advised that the professional associations seem to be in favor of it. Ms. Christenson explained that the Legislature has not been in favor of requiring continuing education for many professions, not just engineering and land surveying; the Legislature does not believe mandatory continuing education helps enforcement; the Legislature believes it just helps increase membership in professional associations. President Brandow noted that the Board had not discussed the issue of continuing education for several years. Ms. Tuttle stated her surprise that continuing education was not required for professional engineers and land surveyors considering all of the technical and technological advances in the professions.

MOTION: Mr. Frutchman/Mr. Schock moved to place an item on the agenda for a future Board meeting to discuss Continuing Education and to direct staff to invite professional associations and representatives from the Legislature to participate in the discussions.

VOTE: 9-0, motion carried.

President Brandow recommended that reviewing the issue of continuing education should be included in the Strategic Plan under the evaluation of the laws. He also suggested that the review of publications should be included in the Strategic Plan.

MOTION: Ms. Safran/Ms. Tuttle moved to approve the 2004/05 Strategic Plan with the changes as discussed.

VOTE: 9-0, motion carried.

12. Appointment of Emeritus Board Members (Possible Action)

Ms. Christenson gave a report on how the appointment of Emeritus Board members started. She explained that NCEES allows former board members to serve on NCEES committees as long as they have been designated as Emeritus Board members by their own board. She explained that it is very helpful to the Board to have former Board members serve on NCEES committees because they can continue to represent the interests of California.

MOTION: Ms. Safran/Mr. Foley moved to re-appoint Stephen Lazarian, Ted Fairfield, and George Shambeck as Emeritus Board Members.

VOTE: 9-0, motion carried.

The Board directed staff to request all Emeritus Board members to submit a brief report to the Board after attending any NCEES meeting, describing what happened at the meeting.

Mr. Duffy also asked that the Emeritus Board members be invited to attend a future Board meeting so that they can be introduced to the current Board members.

13. PLS NAFTA Mutual Recognition Document (Possible Action)

Mr. Wake, representing CLSA, distributed a handout to the Board regarding CLSA's position on Mutual Recognition Document (MRD).

Ms. Christenson reported that the three main concerns of USCIEP regarding the PLS NAFTA Mutual Recognition Document are as follows:

- First, the MRD proposes a two-tiered licensing system that would confer separate licenses for boundary surveying and non-boundary surveying (called “geomatics” in the MRD), which does not align with the current single-license regulatory system used by most Member Boards.
- Second, under the provisions of the MRD, boundary surveying would be regulated while non-boundary surveying would not.
- Third, the MRD does not establish minimum education requirements for licensure nor does it address the types of mechanisms such as written examinations that are used to assess minimum competence.

Ms. Christenson explained that some additional concerns are as follows:

- All three NAFTA member countries allow certain geomatic activities to be conducted without a license in at least some jurisdictions. Interpreted broadly, Part III, Article III of the MRD would allow anyone who possesses a “license” for any aspect of the practice of land surveying in any ratifying jurisdiction (U.S., Canada, or Mexico) to automatically obtain a license to conduct geomatic activities in other jurisdictions requiring such licenses. Part III of the MRD grants full reciprocity to Canadian and Mexican surveyors who hold licenses and who want to provide geomatic services in the U.S.
- The MRD is silent on the prescriptive requirements for Certificates of Authorization, which are required as a part of licensure in many of the U.S. jurisdictions.
- Lack of collaboration with representatives from ABET and the Member Boards have weakened the document and will likely hinder its acceptance by U.S. jurisdictions.

MOTION: Ms. Safran/Mr. Welch moved to support CLSA’s position and oppose the MRD in its current form and to send a letter expressing the Board’s opposition and recommending that the groups preparing the MRD should work more closely with the states and professional associations.

VOTE: 9-0, motion carried.

14. Administrative Update (Possible Action)

a. Fund Condition

Ms. Thompson reported on the fund condition dated May 28, 2004. Ms. Thompson pointed out that the projected revenue has decreased for renewal fees from \$3,817,000 to \$3,590,000 and from \$2,840,000 to \$2,607,000 for application fees. The projected fund reserves have also

dropped in FYs 2006-07 and beyond to less than one-month reserve due to the decline exam population this FY.

b. FY 2003/04 & 2004/05 Budgets (Possible Action)

Based on the expense reports, Ms. Thompson reported that there is a projected \$18,656 in excess budgeted funds available after projected expenditures for this FY. The projections include savings in national exam fees due to declining exam population and savings in exam vendor fees because the Board will complete the Special Civil occupational analysis in-house. Expense projections increased for postage fees related to the April 2004 exam, computer equipment replacements needed and postage for this FYs enforcement bulletin mail-out.

Regarding the FY 2004-05 preliminary budget projections, \$92,692 in excess budgeted funds is projected. Ms. Thompson recommended that this excess be put back into the Board's reserve fund rather than spent to help build up the declining funds reserve level.

c. 2004-05 and 2005-06 Budget Change Proposals

The Board's FY 2004-05 NCEES Fee Increase BCP was placed on consent and approved for the Assembly Budget hearing and is scheduled for the Senate in the next couple of weeks.

For FY 2005-06, the Board doesn't plan to submit any BCPs. Ms. Safran asked Ms. Thompson if the Board would be able to request additional funding for staff in the future. Ms. Thompson responded this may be possible for enforcement staff if the Title Acts become Practice Acts as enforcement staff load will likely increase.

d. Publication Review

Ms. Thompson reviewed the chart included in the agenda packet that displays publications produced by four (4) of the DCA construction and design boards and the costs in comparison to the Board.

Regarding the Office of State Publishing advertising program, Ms. Thompson pointed out that the positive and negative points of participating in this program based on the requirements of the program and information gained from discussions with other Board's now participating. The major benefit is that the Board's OSP invoice costs for printing would be reduced for any income OSP receives for ads they print in the Board's publications. This savings, however, would be offset by OSP's fees to obtain advertisers, any ad copy changes they must make to adapt to their computers and/or equipment, and sometimes higher printing fees OSP charges compared to private vendors. An estimated two-months time is also needed for approval of the ad once approved for

inclusion in the Board's publication. Ms. Thompson also provided copies to the Board of State publications that include advertisements.

President Brandow questioned if the Board would mail out the next bulletin as done before or put it on the Board's website and send out a postcard notifying licensees of its availability. The majority of costs related to the newsletter is for postage. Vice President Foley questioned if the Board could send it out via e-mail to those interested. Ms. Eissler pointed out that this was an option in the past but not enough people requested it be sent to them. Ms. Christenson and Ms. Eissler indicated that the Board does not have the technical capabilities to manage and send out notices via e-mail to those interested. It was the consensus of Board members and staff that the bulletin would be included on the website with notification to licensees to this fact sent out on a postcard. The option of requesting a hardcopy will also be included on the postcard.

The Board directed staff to put together a schedule of publications that will identify when publications were last printed and when they need to be updated again; one publication will be reviewed at each of the upcoming Board meetings to decide if changes are needed, with the bulletin being reviewed at the June 2004 meeting.

16. Legislative

a. Discussion of Proposed Legislation for 2004, including but not limited to AB 320, AB 1265, AB 1826, AB 1976, SB 1547, SB 1728, and SB 1735 (Possible Action)

Mr. Duffy reported on the status of the bills the Board is following. Mr. Duffy advised that no action was needed on SB 1728 because it had been amended and no longer affects the Board; he explained that it would be placed on the FYI list.

MOTION: Mr. Duffy/Ms. Safran moved to watch AB 1976 regarding Home Inspections.

VOTE: 9-0, motion carried.

MOTION: Mr. Duffy/Mr. Schock moved to support SB 1735 regarding vacant positions at the Department of Consumer Affairs.

VOTE: 9-0, motion carried.

b. Regulation Status Report

No additional report was given.

10. Title Act Study Report & Task Force (Possible Action)

a. Final Recommendations of the Task Force regarding THE ENGINEERING TITLE ACT STUDY: The Practice/Title Act Distinction and Protection of Public Health, Safety and Welfare (referred to as “the Study”) to be Presented to the Board for Professional Engineers and Land Surveyors [Possible Action]

Mr. James, representing PECG, and Mr. DeWitt, representing CELSOC, presented a joint position statement and handout regarding their organizations’ recommendations. Mr. James encouraged the Board to make a specific recommendation on each Title Act discipline to the Legislature, rather than simply recommending that all Title Act disciplines go through the Sunrise process. He advised that PECG and CELSOC are recommending that some disciplines be eliminated, others be changed to Title Authorities, and others remain as Title Acts. Mr. DeWitt stated that their organizations are concerned with the recommendations from the Task Force and believe it is absolutely the wrong thing to do to punt this issue to the Legislature; the Board should make a recommendation on each Title Act discipline.

President Brandow noted that the Legislature does not seem to favor keeping any of the Title Acts as just Title Acts. Mr. Duffy noted that the JLSRC had originally asked the Board to make recommendations. He stated that he does not think a case has been made for the complete elimination of Title Acts. Mr. Foley stated that he has attended several JLSRC hearings and the impression from the Legislators and their staff is that they want to get rid of anything that just protects the title and does not protect the practice.

Mr. Foley stated that he believes most of the Title Act disciplines are doing design and that they have to do design in order to do their work. He stated that he appreciates the effort that went into PECG’s and CELSOC’s joint paper, but their recommendations seem to be based only on the number of applicants in each discipline. He stated that that approach does not seem appropriate. He stated that if there really are that few people practicing in those disciplines, then they will sunset themselves through attrition even if they are made into Practice Acts. He stated that he sees no justification to leave any as just Title Acts.

Mr. James stated that the number of applicants indicates the potential licensees and the public impact. He stated that the bigger picture is what they do and how they impact the public. He recommended that the Board have a three- to five-year phase out of the Title Acts in which no one else would be licensed during that period.

Mr. Duffy noted that even after the Board makes its recommendations, the Legislature could still make changes. He recommended that Business

and Professions Code section 6759 should be amended so that a comity applicant did not have to be licensed in “the closest branch” if the Board does not offer licensure in the branch the applicant is licensed in in another state.

Ms. Safran questioned how making Traffic Engineers a Title Authority but not allowing them to practice civil engineering would affect enforcement. Mr. Duffy stated that making all of the Title Acts into Practice Acts would affect enforcement.

Mr. DeWitt advised that the majority of the members of both CELSOC and PEEG are licensed in the Practice Acts.

Mr. Fruchtman stated that he believes traffic engineering and fire protection engineering are the only disciplines that need to be considered for conversion to Practice Acts; all of the other disciplines could be eliminated.

President Brandow pointed out that there is no way to know how many people would apply for licensure if the Title Acts become Practice Acts; currently, there is no incentive to get licensed in the Title Act disciplines.

Mr. Reisner, representing CLCPE, stated that he is not arguing against the PEEG/CELSOC position, but that it does raise questions by only focusing on the number of people taking the examinations. He stated that there are many areas of public protection such as the integrity of the structure – will it fall down – versus safety in a fire – smoke evacuation and how to get people out safely; both are just as important to public safety. He stated that the Board should not just be looking at how many people take the examinations in the Title Act disciplines; he believes that position oversimplifies the issue. Mr. Reisner also stated the Board would have to explain why it was following the PEEG/CELSOC recommendations rather than the recommendations of its own Task Force. He pointed out that the Board has spent many years and many meetings looking at the Title Acts; the Board did recommend eliminating Traffic Engineers, but the Traffic Engineers made their case in the Legislature and were not eliminated. He stated that it was made clear at the Task Force meetings that it is very difficult to discipline the Title Acts; he questioned how keeping any Title Acts addresses this problem. He stated that ISR reviewed the Title Acts and made recommendations and then the Task Force reviewed those recommendations and made its own recommendations. He stated that the recommendations to change all to Practice Acts and to allow limited overlap are reasonable recommendations and would address the issues.

Mr. Foley noted that California is the only state with Title Acts. Mr. Duffy stated that he did not believe the Board should base its decision just on California being different.

President Brandow stated that the Structural Engineers do not like that it is only a Title Authority; they think that is unworkable.

Mr. Duffy stated that he does not think that ISR or the Task Force really looked at each Title Act discipline or the enforcement issues. He asked Mr. Reisner if CLCPE's position was that all of the Title Acts should be converted to Practice Acts. Mr. Reisner said that it was and that he also thinks that the Board can currently discipline the Title Acts. He also said that there was a reason for each Title Act discipline to be created and there is enough justification in other laws and ordinances to require licensure, so the Board should be able to discipline them.

Mr. Pierce, Agricultural Engineer, stated that there are three components to design: the imagination of looking at things differently, the design of how to implement them, and then the breakdown into disciplines of engineering. He stated that vegetables are now being processed in the field instead of being brought into a sanitized building, which creates the issue of how to sanitize in the field. He stated that there are environmental and run-off issues with the rivers. He stated that he does not believe knowledge can be segregated. Mr. Pierce stated that the number of applicants for licensure as Agricultural Engineers is not reflective of the profession because there is currently no point in getting licensed as an Agricultural Engineer because it is only a Title Act. He said that he recommends that people get licensed as Civil Engineers rather than as Agricultural Engineers.

Mr. Duffy asked if Mr. Pierce was advocating that agricultural engineering become a Practice Act. Mr. Pierce advised that it would not affect him or his current practice because he works with Civil Engineers, Electrical Engineers, and Geologists; he pointed out that in other states, a person is licensed as a Professional Engineer and can practice in whatever area he is competent.

Mr. Duffy asked if Mr. Pierce thought that each Practice Act discipline should have a position on the Board. Mr. Pierce said he did not think that would be necessary because there could be advisory committees.

President Brandow asked what Mr. Pierce thought of the NCEES Agricultural Engineering examination. Mr. Pierce said that he knew it was harder than the Civil Engineering examination, but he had never actually taken it because he was licensed through the grandfathering process.

Mr. Stout, Electrical and Control System Engineer, advised that he had been the chairman of the committee that developed the national Control System Engineering examination. He noted that all examinations but the Traffic Engineering examination are NCEES examinations. He said that, last year, there were 167 applicants for the Control System Engineering examination nationally; it was one of the three highest in the Group III examinations, along with Industrial and Fire Protection. He said that the number of applicants should not be an issue for the Board. He said there is justification for licensure as a Practice Act because the examination development survey showed that about 50% are self-employed or employed at engineering firms. He explained that control system processes are inherently hazardous. Mr. Stout stated that he finds comments about the increase in enforcement case load to be insulting because it implies that the Title Acts are less competent. He said that licenses are required to be job-related and that everyone cannot be put into civil, electrical, or mechanical engineering. He stated that the size of the Board membership is a red herring because there is already a position on the Board that rotates between the other disciplines of engineering. He advised that he had co-authored an article on control system engineering for an upcoming NCEES Licensure Exchange newsletter.

President Brandow asked Mr. Stout where he thought the Board should go. Mr. Stout stated that he believed that all branches should be put on an equal basis since it is good enough for the other 49 states.

Mr. Duffy stated that he did not mean to imply that the Title Acts would cause more enforcement cases because of a lack of competency, but that more Practice Act engineers means that a greater enforcement budget will be needed.

Mr. Okitsu, representing the Registered Traffic Engineers of America, advised that he is licensed as both a Civil and a Traffic Engineer. He stated that he only got licensed as a Civil Engineer because of the unique situation. He said there is a latent demand for Traffic Engineers but people do not get licensed as Traffic Engineers because it is just a Title Act. He stated that people do see the value of the title. He said that making Traffic Engineers a Title Authority for Civil Engineers would create problems because traffic engineering is not wholly within civil engineering, some of it is electrical engineering, but it is really its own discipline because it considers the human factor, not a fixed work or an electrical system. He stated that making it a Title Authority for Civil Engineers would also reduce the pool of Traffic Engineers because it would diminish the available people to become Traffic Engineers by about 50%. He pointed out that Geotechnical Engineer is just a title and does not convey any additional practice authority. He stated that he opposes the PECG/CELSOC recommendation that Traffic Engineer become a Title

Authority; he stated that the members of his organization would prefer it to remain a Title Act rather than become a Title Authority, but their overall preference would be for it to become a Practice Act. Mr. Okitsu advised that Oregon has a Traffic Engineer license as well; it is its own discipline.

President Brandow noted that in many colleges, traffic engineering is not even covered in the civil engineering program and making it a Title Authority would force people to become Civil Engineers who have no background in civil engineering. Mr. Duffy pointed out that many do that now. Mr. Foley stated that much of the traffic engineering done now is closer to electrical engineering than to civil engineering.

Mr. Fruchtmann stated that he favors generic licensure because there is so much overlap between all of the disciplines. Mr. Foley stated that any change has to be done a step at a time. Mr. Reisner stated that CLCPE favors generic licensure.

President Brandow asked Mr. Okitsu if the Traffic Engineers had approached NCEES about creating a national examination. Mr. Okitsu advised that they were trying to get NCEES's attention. Mr. Stout explained that it is now harder to create new examinations through NCEES. Mr. Duffy questioned who performed traffic engineering in other states. President Brandow advised that since so many states are generic, any professional engineer can do it; he said the majority is probably done by those who have taken the Civil, Electrical, or Control System Engineering examination.

Mr. Callahan, Fire Protection Engineer, stated that the Title Acts are allowed to do design as long as it does not include civil, electrical, or mechanical engineering design. He stated that if a Title Act discipline is eliminated, then that discipline would be unregulated. He stated that there would be disenfranchisement lawsuits if the Title Acts were subsumed into civil, electrical, or mechanical engineering. He stated that he believes the number of applicants will increase after any new specialty license is created. He said that many people have specialized education and work experience in one of the Title Act disciplines, but they get licensed as Civil, Electrical, or Mechanical Engineers because those are the Practice Acts. Mr. Callahan stated that California is moving away from prescriptive codes and moving towards performance codes in the building and other related codes; this will cause a need for licensure to protect the public. He stated that 40% of the building codes deal with fire/life safety.

Mr. Helfrey, representing the Southern California Chapter of AIChE, stated that the issue of the Title Acts has been around for a long time. He said that the Legislators got tired of all of the different Title Acts coming to them for licensure, so the Legislature gave the Board the authority to create

Title Acts; however, in the late 1970s, DCA and the Legislature became concerned with the proliferation of Title Acts and took the authority away from the Board. He stated that the proliferation of the Title Acts shows the evolution and development of specialties. He stated that there would be problems if the licensure of some of the existing Title Acts was simply dropped; for example, if the Board were to say that Chemical Engineers do not need to be licensed, then anyone could practice chemical engineering without a license and there would still be an issue of what constitutes the practice of civil, electrical, or mechanical engineering versus the practice of chemical engineering.

President Brandow asked Ms. Christenson to explain the timeline for submission of the Board's recommendations. Ms. Christenson advised that the Board's next Sunset Review hearing would be held in early July, so the Board's recommendations have to be submitted to DCA and the JLSRC before then; therefore, the Board either needs to finalize its recommendations at this meeting or schedule another meeting in May.

Ms. Christenson explained that, in preparing the draft recommendations, she renumbered and modified the issue statements for clarity. She also added the Board's comments and the information shown in italics for clarity and specificity, based on the discussion at the last Board meeting.

Ms. Scuri recommended that any of the recommendations that include releasing information to the public be modified to indicate that information would be released to the public "consistent with existing law."

MOTION: Mr. Foley/Ms. Safran moved to adopt the recommendations with the modification suggested by Ms. Scuri.

Mr. Duffy stated that he has concerns with the wholesale conversion of all of the Title Acts to Practice Acts, as stated in Recommendation 3; he believes the Board should review each Title Act discipline first, not the Legislature. President Brandow stated that the Board would provide input on each discipline to the Legislature during the Sunrise hearings.

Ms. Tuttle noted that Recommendation 3 seemed to be leaving out the option to keep some as Title Acts.

Mr. Duffy stated that he does not believe that the legislative process would give enough time for the Board to make its case.

Mr. Foley asked Ms. Christenson to explain what role the Board would have during the legislative Sunrise process. Ms. Christenson advised that the Board would be able to provide input to the Legislature during the process. She explained that the Sunrise process would include reviewing

other impacted professions. She stated that the Board could recommend to the Legislature that the Board be allowed to decide about each Title Act, but the Legislature is likely to not agree to that.

Mr. Foley stated that the Board should follow the recommendations of the Task Force and work with the Legislature during the Sunrise process.

Ms. Tuttle stated that the language seems to box the Board in, that the Board could not recommend that some stay as Title Acts.

Mr. Duffy stated that he does understand that the Legislature will make the decision no matter what; however, a recommendation should come from the Board regarding the Title Acts prior to that time.

Ms. Christenson explained that the Board has been trying to deal with the Title Acts since 1978, and the Legislature did take away from the Board the authority to create new Title Acts. She explained that all studies, involving any profession, have shown that protecting only the title does not protect the public if the practice is not also regulated.

Mr. Duffy stated that the title does show something to the public – it lets the public know that the licensee has earned the right to use the title through testing and/or experience. Ms. Christenson advised that the Board can discipline the Title Acts, but that it is not an effective discipline. Mr. Schock stated that the Title Acts give the consumer a false sense of security because they do not understand that it is only the title that is protected, not the practice. Mr. Fruchtmann stated that many local agencies also do not understand the difference.

Mr. Fruchtmann questioned what would happen to the existing licensees in a discipline if that particular Title Act was eliminated. Ms. Christenson explained that the Board would no longer administered examinations in that discipline or issue new licenses but the existing licensees who continue to pay their renewal fees would still be able to use restricted titles such as “Professional Engineer.” The Board directed staff to include this explanation as a clarifying comment with the recommendation.

Ms. Safran stated that the Board was directed by the Legislature to have a study done and this is what came out of that study. She stated that the Board has had real problems in the past in not being cooperative with the Legislature.

Ms. Christenson explained that the Sunrise process is a two-year process: the hearings are held the first year, and the legislation is processed the second year.

Mr. Duffy stated that the JLSRC had directed the Board to make a recommendation on each Title Act. Ms. Eissler advised that Bill Gage had explained at the last Board meeting that that direction had been made prior to changes being made in the laws governing the Sunrise process; these changes in the Sunrise process changed the timing of when the Board's input should be given to the Legislature so that the input on each individual Title Act should now be given during the Sunrise hearings and not before.

Ms. Tuttle suggested changing the wording in the recommendation to say that the Board "will" provide input. Mr. Foley expressed concern with telling the Legislature what the Board will do as part of a legislative process. President Brandow recommended including a comment that the Board believes it has an important role in the protection of the public and needs to be involved in the process.

Ms. Christenson stated that the Legislature has made it clear that it will not let the Board make the decisions on each Title Act on its own.

Mr. Duffy questioned why, if the Board would not take a position on some of the Title Acts now, it would take a position. President Brandow stated that he believed the Board should address each Title Act during the Sunrise hearings.

Mr. Fruchtmann questioned if each Title Act would become its own Practice Act or if they would become part of civil, electrical, or mechanical engineering. President Brandow advised that they would each be their own Practice Act.

Ms. Christenson asked if the Board wanted to recommend any changes to the existing law regarding comity which requires the Board to license a comity applicant in the "closest branch" if we do not license in the applicant's branch. Mr. Duffy stated that he sees that as justification for keeping some of the Title Acts as Title Acts rather than eliminating them. Mr. Foley stated that he does not believe the Board should take on more now; if it is made too broad, it will not go anywhere. He stated that the Board could address this at a later time if it became an issue.

The Board directed that Recommendation 3 be modified to state that the Board "will provide testimony and may make recommendations"; to add President Brandow's comment regarding the Board's role; and to add the clarifying comment regarding the current licensees in any discipline that is eliminated.

Mr. Fruchtmann suggested that the dollar amount in Recommendation 6 be increased to \$50,000.

Mr. Duffy stated that he has concerns with the requirement to report civil settlements because many times the settlement is not under the control of the licensee.

Ms. Ruff explained that reporting to the Board does not mean that the Board will automatically take disciplinary action; investigation would still have to be done on the reported information to determine if any disciplinary action is warranted.

Mr. Duffy stated that he is leery as to how the information would be used. He explained that he is worried that an engineer working for a large company or for a public agency might be looked on less favorably by the Board's Enforcement Unit as a result of settlements made by his employer, or former employer, on projects he was involved with, but over which he had no decision-making control.

Mr. Foley stated that he is willing to agree to \$50,000, but he is concerned that it could raise flags because most other professions are at \$30,000 and there would be questions regarding why engineers and surveyors are different.

Ms. Scuri suggested that the recommendation be clarified to indicate that it is the report submitted to the Board that would not be subject to disclosure, not the underlying court information. She also recommended that "self-insured" be included to cover any governmental agencies or others who provide their own insurance-type coverage.

The Board directed that Recommendation 6 be modified to change the dollar amount to \$50,000; to clarify that it is the reports submitted to the Board that would not be subject to disclosure; and to include "self-insured" as a group that must also report.

AMENDED MOTION: Mr. Foley/Ms. Safran amended their original motion and moved to adopt the recommendations with the following changes:

- Any recommendation that includes releasing information to the public is modified to indicate that information would be released to the public "consistent with existing law."
- Recommendation 3 is modified to state that the Board "will provide testimony and may make recommendations"; to add President Brandow's comment regarding the Board's role; and to add the clarifying comment regarding the current licensees in any discipline that is eliminated.

- Recommendation 6 is modified to change the dollar amount to \$50,000; to clarify that it is the reports submitted to the Board that would not be subject to disclosure; and to include “self-insured” as a group that must also report.

VOTE: 7-2, motion carried; Mr. Duffy and Ms. Tuttle voted nay.

15. Enforcement

a. Possible Amendments to Board Rule 418 – Criteria for Rehabilitation (Possible Action)

Ms. Eissler reviewed the staff report included in the agenda package. She explained that staff needs input from the Board as to what should be included in the Criteria for Rehabilitation; staff will then prepare the actual language for the Board to review at a future meeting.

Several Board members indicated that they would like to include an item regarding recognition of wrongdoing since many petitioners seem unwilling to even concede that they did something wrong which led to the revocation of their licenses; they still seem to want to blame everyone else. Ms. Scuri advised that rehabilitation is usually viewed by the courts as changes in attitude and correction of behavior, so including items along those lines would be very appropriate.

Ms. Ruff suggested including an item regarding changes in the persons business practices. She also recommended that history of complaints prior to the revocation should not be included and that only the history of any citations or formal actions taken since the revocation of the license should be considered. She explained that considering complaints that did not lead to any type of action could be viewed as prejudicial and any actions taken prior to the revocation would have been considered as aggravating evidence in the underlying case.

Several Board members stated that they believed the educational component should be broader than just “continuing education,” which seems to imply that it only means seminars or professional development courses, rather than actual college-level courses. Ms. Eissler indicated that the intent was to include any type of education beyond the education gained prior to initial licensure but especially that gained after revocation.

MOTION: Mr. Duffy/Mr. Schock moved to direct staff to prepare the actual language based on the eight items listed in the agenda package, with the following modifications:

- Delete the reference to the history of complaints or actions prior to the revocation and include history of citations or formal actions taken after the revocation.
- Broaden the educational item.
- Include an item regarding recognition of wrongdoing that led to the revocation.

VOTE: 9-0, motion carried.

b. Possible Amendments to Board Rules 472.1, 473, and 473.1 – Citation and Fines (Possible Action)

Ms. Eissler reviewed the information contained in the staff report in the agenda packet.

Ms. Scuri recommended modifying the new language to be added to Board Rule 473 to say “in any case,” rather than “in cases.” She also recommended deleting the phrase “or when deemed necessary by the Executive Officer” because the Office of Administrative Law could determine that phrase was not sufficiently clear. Ms. Scuri advised that the Executive Officer would always have that option even if such language was not included in the regulation; therefore, the phrase is unnecessary.

MOTION: Mr. Duffy/Mr. Schock moved to approve the language shown in the agenda packet, with the changes recommended by Ms. Scuri, and to direct staff to begin the rulemaking process.

VOTE: 9-0, motion carried.

The Board meeting recessed at 4:30 p.m. and will begin again tomorrow at 9:00 a.m.

Friday April 23, 2004

Board Members Present: Gregg Brandow (President), James Foley (Vice President), Arthur Duffy, David Fruchtmann, Robert Jones, William Roschen, Millicent Safran, William Schock, Cindy Tuttle, Michael Welch, and Dale Wilson.

Board Members Absent: Elizabeth Warren and Edward Yu.

Board Staff Present: Cindi Christenson (Executive Officer), Anita Scuri (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Attorney General Liaison Analyst), Debbie Thompson (Budget Analyst), and Cindy Fernandez (Executive Analyst).

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Brandow at 9:00 a.m. Roll call was taken, and a quorum was established.

Mr. Jones arrived at 9:05 a.m.

2. Public Comment

There was no public comment.

7. Comity and Temporary Authorization Applications (Possible Action)

MOTION: Mr. Foley/Mr. Schock moved to grant a 180-day Temporary Authorization to practice civil engineering to Albert Highberger.

VOTE: 11-0, motion carried.

8. Hearing on the Second Petition for Reduction or Modification of Penalty of Alfred Colarusso [OAH No. 2004030816] The hearing on the Petition will be held on Friday, April 23, 2004, beginning at 9:30 a.m., or as soon thereafter as the matter may be heard.

The Board heard the Petition for Reduction of Penalty of Alfred Colarusso.

9. Closed Session – Administrative Adjudication [Pursuant to Government Code section 11126(c)(3)] – This Closed Session will be held immediately following the hearing on the Petition.

The Board went into closed session at 11:00 a.m. to decide the Petition for Reduction of Penalty of Alfred Colarusso.

**17. Technical Advisory Committee Reports
(No Committee Meetings were held.)**

a. Board Assignments to TACs (Possible Action)

No assignments were made.

b. Appointment of TAC Members (Possible Action)

No appointments were made.

Ms. Safran again expressed concern over only being able to hold one TAC meeting per year and would like to look into being able to hold more.

18. Liaison Reports (Possible Action)

a. ABET

Ms. Christenson advised that the Board should receive the dates of the upcoming ABET visits sometime in either July or August 2004.

b. NCEES

1. Report on Western Zone Meeting

Vice President Foley reported on the Western Zone meeting held April 1 through 3, 2004, in Las Vegas, Nevada. President Brandow, Vice President Foley, and Ms. Christenson attended the meeting. At the meeting, Vice President Foley presented the report from the Fire Protection and Design/Build Committee, which will be submitted at the Annual Meeting in August.

President Brandow reported that he presented a report on the Structural Engineering Educational Recognition Task Force, which is developing a Model Law and Council Records program for Structural Engineers. President Brandow advised the Board that he had met with representatives of Illinois, Oregon, and Washington Boards regarding a recommendation that NCEES create a "Structural III" examination, which would cover the issues contained in our state-specific structural engineering seismic examination. He stated that the Western Zone had supported the recommendation. He requested that his item be placed on the agenda for the June meeting so that the Board could formally direct the members attending the Annual Meeting to make a motion based on this recommendation.

Mr. Foley reported that he attended the Land Surveyor Forum. He said there was consensus on the Board's position regarding the definition of land surveying and the problems with creating two separate categories of practice. He said that ASCE gave a presentation regarding requiring additional education beyond a Bachelor of Science degree.

Ms. Christenson reported that there was a straw vote on NCEES possibly making ELSES the sole source examination administrator for NCEES examinations. Ms. Christenson advised that several of the states have concerns about this proposal, especially with the costs. She also reported that ELQTF is just making presentations at all of the Zone meetings this year, and there will probably not be a vote on any recommendations until the 2005 Annual Meeting.

c. Technical and Professional Societies

Mr. Fruchtmann reported that he and Ms. Christenson were the guest speakers at a forum for Electrical Engineers in Los Angeles County where they presented an overview of the Board's functions and duties. He advised that the attendees were very interested in the Board's activities. He thanked Ms. Christenson for preparing such a thorough presentation.

President Brandow reported that he had given a similar presentation to the Structural Engineers Association of Southern California.

1. CELSOC Forums on the Codes of Professional Conduct

President Brandow reported that many of the licensees expressed concerns with the wording of the Codes and their inability to meet the requirements. He said that they were encouraging the Board to make changes to the Codes. He noted that most of the problems described seemed to be based on hypothetical situations rather than actual problems they had encountered. He said that he had encouraged them to submit written comments to the Board.

Ms. Eissler advised that she had not received any written comments, other than one letter with questions as to how the Code would apply in certain specific situations. Ms. Eissler pointed out that the Codes only went into effect on July 4, 2003, and that the best information about any changes that possibly should be made to the Codes would come from actual situations that had occurred since the effective date, not from hypothetical situations that might never happen.

Mr. Foley advised that he has heard from licensees who also have concerns about the Codes; he has told them that they need to present their concerns to the Board in a clear and concise manner and that they should focus on the specific problem with suggestions for how to solve it.

President Brandow suggested that a letter should be sent to all of the professional associations asking them for written input with specific real-life examples.

19. President's Report

There was no report given.

20. Executive Officer's Report

1. Administration Report

a. Executive summary report

No additional report was given.

b. State budget

No report given.

2. Personnel

a. Hiring freeze

Ms. Christenson reported that Patricia Canterbury, the Assistant Executive Officer, will be retiring in June 2004, and she is looking into whether or not the position can be filled because of the hiring freeze.

b. Vacancies

No report given.

3. Enforcement/Examination/Licensing

a. College Outreach

No report given.

b. Report on Enforcement Activities

No report given.

c. Report on Examination Activities

Ms. Christenson reported on the administration of the April 2004 examinations.

Ms. Christenson also reported that there has been feedback from candidates who took the Land Surveying examination that they seem to think that it was a fair examination and that they had no time issues with this examination. Mr. Welch stated that he had heard the same thing from people at CalTrans who had taken the examination.

4. Publications/Website

a. Website Activity Statistics

No report given.

5. Sunset Review & Report

No report given.

- 6. Other**
 - a. DCA update**
No report given.

- 21. Approval of Board Travel (Possible Action)**
There was no Board travel.

- 22. Other Items Not Requiring Board Action**
 - a. Next Board meeting: June 25, 2004, Sacramento, California**
President Brandow appointed Ms. Safran and Mr. Wilson to the nominating committee to make recommendations at the June Board meeting for the election of the Board President and Vice President for next year.

- 23. Adjourn**
The Board adjourned at 11:30 a.m.

PUBLIC PRESENT

Tim Callahan, Fire Protection Engineer

Bob DeWitt, Consulting Engineers and Land Surveyors of California (CELSOC)

Paul Helfrey, American Institute of Chemical Engineers, Southern California Chapter

Albert Highberger

Gerald James, Professional Engineers in California Government (PECG)

Ray Mathe, Orange County Surveyor's Office

Walter Okitsu, Registered Traffic Engineers of America

Frank Pierce, Agricultural Engineer

Tom Stout, California Society of Professional Engineers (CSPE)

Steven Tietsworth, Center for Public Interest Law, University of San Diego

Allan K. Wake, P.L.S, California Land Surveyors Association (CLSA)

Carroll Vogel, SAHALE